



## **WORKPLACE MEDIATION**

**March 2013**

V1 Jan2010; updated May 2011

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## **1. Introduction**

South Lanarkshire Leisure and Culture is committed to encouraging harmonious working relationships between colleagues. In most instances, workplace conflict is resolved informally without the involvement of a third party, however where resolution is not achieved the Trust has both formal and informal processes that support the parties in conflict.

The Trust and the Trade Unions are committed to working together in partnership, and this policy has been developed with the full support of the Trades Unions. We continue to work together to find solutions to resolve workplace conflict.

The addition of a mediation scheme to the Trust's procedures increases the choices available to individuals in dispute. It offers a more creative way for participants to resolve their concerns through collaborative problem solving. Workplace mediation is a versatile process which can be used not only as an alternative to formal grievance procedures but also as a rapid first intervention to prevent escalation of the dispute or even to repair the working relationship after formal procedures have been concluded.

## **2. Policy Aims**

- The policy has been adopted to provide individuals with an objective and impartial framework for resolving conflicts at an early stage.
- This policy aims to offer an alternative first stage for resolving conflict and also to make available a process for reconciling working relationships if this is recommended following a formal hearing.
- Employees have the right to invoke the Grievance Procedure if workplace mediation is not appropriate or is unsuccessful.

## **3. What is Workplace Mediation?**

Workplace mediation is an informal process that complements the Trust's formal procedures for dealing with workplace issues. It is a process that is used to help improve working relationships between individuals, perhaps where there has been a misunderstanding or a disagreement leading to a breakdown in working relationships. It is voluntary and completely confidential. A fully trained mediator (a neutral third person) will work with the parties to help them find their own solutions and reach an agreement designed to resolve disagreement or improve the situation. It is based on the principle of collaborative problem solving, with a focus on the future and rebuilding relationships, rather than apportioning blame. It gives the participants an opportunity to step back and look at how the situation can be put right, looking at their own actions as well as those of the other party.

Workplace mediation is conducted on the basis that both parties want to achieve a mutually agreeable outcome and solution. A successful mediation should lead to both parties feeling that the outcome is fair, reasonable and appropriate under the circumstances.

Workplace mediation can be used in a variety of circumstances, for example:

- Misunderstandings/conflict between colleagues or peers.
- Misunderstandings/conflict between employees and managers/supervisors.
- Perceptions of harassment, discrimination or bullying.
- Communication difficulties.

#### **4. General Principles of Workplace Mediation**

- Where there is conflict in working relationships, employees may choose to participate in workplace mediation as a means of resolution. Mediation is voluntary and employees will not be forced to participate.
- The scheme is available to all employees.
- Workplace mediation would normally be initiated by the parties following consultation with their line manager, HR or Trade Union representatives, although self-referral is also an option.
- Workplace mediation referrals must be directed to SLC's Workplace Mediation Co-ordinator who deliver the mediation service on behalf of the Trust. The Workplace Mediation Co-ordinator will assess whether the referral is appropriate for mediation or not.
- If the referral is not suitable for mediation the Workplace Mediation Co-ordinator will explain the reasons for this decision to the person referring and provide advice regarding other options they can take forward. It may also be the case, that mediation is still a future option.
- If the referral is accepted the Workplace Mediation Co-ordinator will appoint a mediator to meet with both parties. The mediator will organise a confidential individual meeting (refer to Stage 1, mediation process) with each party and will ascertain the viability of proceeding with the mediation.
- The mediator will be allocated from a list of qualified mediators (subject to availability) held by SLC's Corporate Personnel team.
- The appointed mediator will be independent of both parties and have no vested interest in the outcome.
- The workplace mediation process is confidential on all sides. The only exception to this rule of strict confidentiality is where there is a potential unlawful act or where there is evidence of serious risk to health and safety. In these circumstances the process will be terminated and the HR Manager will be informed. Information (including documents) may in these cases be supplied to others. Refer to Confidentiality Statement Appendix 1.
- Where parties agree, details of the mediation may also be given to third parties.
- As workplace mediation is a confidential process it is not appropriate to have other parties involved during the mediation process other than in exceptional circumstances and at the discretion of the mediator.
- If a referral was made by a third party (i.e. not self referral) that party will be advised when the process has been completed, but not provided with details of the agreement.
- Agreeing to workplace mediation does not take away an individual's right to access other HR procedures, however information revealed/discussed during mediation will not normally be admissible in such cases.
- Once resolution has been achieved, an agreement will be signed by all parties. This remains confidential between the parties and the mediator.

If the agreement contains items requiring support from a line manager (e.g.

training) all parties must agree how this will be handled and include it in the agreement.

## **5. When is workplace mediation appropriate?**

Given the positive outcomes that can be achieved, individuals may be asked to attend mediation prior to instigating a formal grievance. To maximise the opportunity for successful resolution, mediation is also available during the grievance procedure (without detriment to the individuals if it is unsuccessful) and in some cases following the conclusion of a grievance procedure, as it gives the parties the opportunity to repair their employment relationship and agree how future interactions will be handled.

Workplace mediation is also beneficial for general conflict in the workplace (perhaps where this is affecting two members of a team, or team morale as a whole) where the situation would never escalate to the grievance stage.

Where mediation is agreed part way through the grievance procedure, the formal procedure will be suspended (by the party who initiated the grievance) following confirmation to HR in writing. The grievance can be resumed if the mediation is unsuccessful following written notification from the same party. Equally, if the workplace mediation is successful, the individual can choose to end the grievance procedure by writing to the HR team.

## **6. The Mediation Process**

Irrespective of who proposes mediation, it is a voluntary process which can only be entered into with the agreement of all parties. All requests for workplace mediation must be made via the Workplace Mediation Co-ordinator; mediators should not be approached directly. Any mediator who is approached directly should pass the referral to the Workplace Mediation Co-ordinator – Finance and Corporate Resources, Personnel Services South Lanarkshire Council. There are no request forms, therefore requests can be taken verbally, by email or letter.

The workplace mediation process follows a five stage model and is facilitative in nature.

### **Stage 1 - First contact with participants (Individual meetings)**

The first meeting with participants occurs on an individual basis, enabling the mediator to acknowledge individual feelings and to build trust and rapport with each of the parties. The mediator will explain the process, their own role, the mediation ground-rules and what will be expected of each party during the mediation. The mediator will explore the background to the dispute, identifying what each party would like to achieve from the process. If after an assessment of the issues, the mediator feels it appropriate to do so, they will seek permission to proceed with the joint meeting and will outline the subsequent stages of the process, identifying an appropriate time and location for the joint meeting. (The mediator may need to communicate with either or both parties again (before the joint meeting) to clarify particular points.)

## **Stage 2 - Joint meeting - setting the scene**

The mediator will commence the meeting with introductions and make an opening statement to set the scene. This will include agreeing the ground rules and an explanation of the steps involved in the mediation. Each party will then be invited to explain their position during a period of uninterrupted time. Following the initial statements, the mediator will summarise the position and will work towards the agreement of an agenda.

## **Stage 3 - Exploring the issues**

Having agreed an agenda, the mediator will identify areas of concern and begin to explore the issues with the parties, promoting open and honest communication and encouraging them to see the other's perspective. The focus at this stage is to encourage communication and through appropriate questioning and summarising to check understanding, clarify assumptions and to acknowledge and move on from differences.

## **Stage 4 - Building the agreement**

As the process develops, the mediator will help the parties to generate and assess the viability of options. As an area of agreement is reached, the mediator will clearly articulate this, secure agreement from both parties and record it.

## **Stage 5 - Closure**

Once an agreement on all of the issues has been reached, the mediator will make a closing statement and give a copy of the agreement to all parties, clarifying their responsibility for its delivery. Where some issues remaining outstanding, the mediator may suggest a further session is arranged. The parties may also decide to hold follow-up meetings (even if full agreement has been reached), either with or without the mediator. At this stage, the meeting will be concluded by the mediator who will re-confirm the confidentiality of the process. If no agreement over the issues is reached, the mediator will attempt to gain agreement from the parties as to what the issues are and how they will proceed in the future.

## **Post mediation – evaluation**

The impact and effectiveness of the mediation will be monitored. Accordingly, the parties will be given the opportunity to complete an evaluation of the mediator and the mediation process. The mediator will also undertake a process of self-evaluation, feeding any suggestions for improvements to the Mediation Co-ordinator. Evaluation material will be collated by the Mediation Co-ordinator and treated in the strictest confidence. No personal information will be revealed as part of this process.

## **Appeals**

There is no appeal process associated with mediation; however participation in mediation does not exclude individuals from alternative recourse e.g. submitting a

grievance. Individuals also have the option to register their concerns about the process, or a particular mediator with the Workplace Mediation Co-ordinator.

If participants require mediation in the future related to the same or a similar matter they are welcome to make a request directly to their Manager, HR or the Workplace Mediation Co-ordinator.

For details of the evaluation process, please refer to section 9.

## **7. Roles and Responsibilities**

### **7.1 The Mediation Co-ordinator's responsibilities**

- Act as first point of contact for employees/line managers/HR with potential cases.
- Advise above mentioned parties of most suitable course of action.
- Answer questions/provide advice in relation to general mediation questions.
- Notify and appoint mediators to cases.
- Assist in the co-ordination of resources where difficulties arise.
- Manage the mediation evaluation process.
- Liaise with the Employee Development Team, Finance and Corporate Resources to provide Continuing Professional Development (CPD) for mediators.
- Handle complaints relating to the mediation scheme (complaints relating to the Workplace Mediation Co-ordinator should be made to South Lanarkshire Council's Head of Personnel Services – Finance and Corporate Resources)
- Collate and distribute updates regarding mediation.
- Maintain a partnership approach to the mediation scheme.

### **7.2 Mediator's Responsibilities**

- Successfully complete the mediation training.
- Be aware of and keep up to date with ACAS guidelines in relation to mediation as supplied by the Workplace Mediation Co-ordinator.
- Undertake case work for those who feel they are experiencing work related problems.
- Maintain a high quality mediation process, protecting its integrity.
- The mediator has the right to refuse to mediate (e.g. if they feel that an individual has been forced to participate, is attempting to use the mediation to their own advantage or they have a personal interest) and should record their reasons for doing so in the mediator evaluation form.
- Employ the principles of equality and diversity throughout the process.
- Complete associated administrative work – e.g. reporting back to the Workplace Mediation Co-ordinator for case sign off etc and statistical reporting.
- Participate in training of new mediators as required.
- Act as a mentor to new mediators.
- Participate in the evaluation process.
- Undertake networking and refresher training for CPD as required.
- Attend group mediator team meetings.
- Manage the mediation process in a professional manner:

- ✓ Listen, reassure, support and advise individuals who have been referred for or sought mediation.
- ✓ Act as an impartial third party, organising and facilitating mediation meetings between members of staff in conflict.
- ✓ Arrange suitable mediation venues and facilities which ensure confidentiality and no interruptions.
- ✓ Provide sessions appropriate to participants e.g. consider time restrictions and access to the service for disabled participants.
- ✓ Provide a safe environment.
- ✓ Uphold ground-rules.
- ✓ Encourage individuals to take charge of their own decisions and to accept responsibility for the consequences of their decisions.
- ✓ Arrange follow up sessions and feedback if necessary.
- ✓ Decide whether a third party should be present at the mediation if requested by the employee.
- Maintain practice standards
  - ✓ Demonstrate impartiality - ensuring both parties are treated equally.
  - ✓ Uphold confidentiality.
  - ✓ Maintain the credibility of the scheme and the mediator.
  - ✓ Be respectful.
  - ✓ Act in a non-discriminatory, professional manner, ensuring participants do the same.
  - ✓ Uphold the principle of the voluntary nature of mediation.
  - ✓ Maintain balance.
  - ✓ Maintain consistency.
  - ✓ Uphold fairness.
  - ✓ Provide clarity in boundaries/process.

### **7.3 Participant's responsibilities**

- When accessing workplace mediation, enter positively into the process with a view to reaching an agreeable outcome.
- When participating in the process, uphold the ground-rules at all times.
- Respect the confidential nature of the process, refraining from communicating any information connected with the mediation to others (unless with specific agreement from both parties, e.g. to approach a line manager for training).
- Understand that any information discussed during mediation may not be used as part of any other resolution process (e.g. the content of mediation may not normally be disclosed as part of a formal process).
- Abide by and respect the terms of any agreement reached through mediation.
- Parties should agree not to request evidence from the mediator in any subsequent procedure or tribunal.
- Notify the line manager immediately if mediation needs to continue beyond expected timescales.
- If mediation takes place as an alternative to a formal grievance and is resolved through the mediation process, it is the responsibility of the employee who raised that grievance to formally write to the HR Manager to state the grievance is resolved and closed. Similarly, if the case is not resolved, it is the responsibility of the individual to write to the HR Manager to re-institute the grievance procedure.
- Participate in the mediation evaluation process.



#### **7.4 Line Manager's responsibilities**

- Undertake workplace mediation awareness training for managers.
- Understand the benefits of mediation and promote this as a method of conflict resolution where appropriate.
- Take responsibility for people management issues, not referring inappropriate cases to mediation (which would be more appropriately handled by the line manager).
- Recognise the link between the mediation process and other processes, both formal and informal.
- If appropriate, commit sufficient time to talk to the mediator about how the disagreement is affecting the team.
- Ensure sufficient time is provided for the participants to undertake all appropriate steps in the mediation process.
- Support (within constraints of budget) any training/follow up action agreed during mediation, e.g. training/mentoring.
- Respect the confidential nature of mediation. Never seek information from the mediator or press participants to reveal details of a mediation agreement.
- Encourage but never coerce parties into mediation.
- Participate in the mediation evaluation process if required.
- Re-initiate mediation or undertake appropriate action if the conflict deteriorates.

#### **7.5 Trades Union Representatives' responsibilities**

- Understand the benefits of workplace mediation and promote this as a method of conflict resolution where appropriate.
- Undertake mediation awareness training.
- Respect the confidential nature of mediation. Do not seek information from the mediator or press participants to reveal details of a mediation agreement.
- Recognise the link between the mediation process and other processes, both formal and informal.
- Maintain a partnership approach to the mediation policy.

#### **8. Mediator Support**

It is critical that mediators are supported in their role and are made to feel part of a cohesive team. Accordingly, mediators will be supported in the following manner:

- Each mediator will be partnered with another one in a different SLC resource.
- The Workplace Mediation Co-ordinator will circulate mediation updates regularly and will be on hand to provide advice and guidance.
- Three sessions will be held each year with the Workplace Mediation Co-ordinator that will enable mediators to
  - Share experiences
  - Evaluate their own performance in a safe and supportive environment
- If a mediator feels threatened or abused by a mediation participant they will have immediate access to the Workplace Mediation Co-ordinator who will investigate and take necessary action.
- Each mediator will have the support of the line manager whilst maintaining confidentiality.

## **9. Evaluation process**

### **9.1 Reason and Purpose for evaluation**

- Obtain feedback from participants, mediators and other users of the mediation process.
- Assure the quality of the policy without jeopardising the confidentiality of disputants.
- Facilitate the development of anonymous case studies that will enhance future disputants understanding of the mediation process.
- Measure the effect on any subsequent reduction in formal cases.

### **9.2 Uses of the evaluation**

- Refinement of the mediation process.
- Personal development of mediators and to inform the provision of future training and support mechanisms.
- Identify user's perceptions of the process.
- Measure effect on formal grievances, sickness absence.

### **9.3 Audience**

Stakeholders include

- Trades Unions
- Senior Managers
- Participants
- Mediators
- Line managers/supervisors

### **9.4 Monitoring**

Progressed mediation cases are reported confidentially, by number only to the Senior Management Team on a quarterly basis. The Mediation Co-ordinator will also annually evaluate the mediation scheme.

## **10. Useful links and references**

<http://www.acas.org.uk>

### **10.2 Related policies:**

Grievance Procedures  
Discipline Procedures  
Dignity at Work

## **Appendix 1**

### **Cases where confidentiality would not be maintained:**

- Where a party reveals they have committed a criminal offence.
- Where a serious/significant risk to health and safety revealed.
- The mediator believes that inappropriate and overt behaviour may have taken place during the mediation session.

### **Confidentiality Statement**

If you are considering using mediation, this confidentiality statement and the policy document should be read first as they form part of the terms and conditions when you participate in the mediation process.

Mediators will not pass on personal information about you (including information relating to attending an appointment or joint mediation session) to anyone outside the group including your manager without your express permission.

We will consult with you and seek to obtain your consent prior to the disclosure of any personal information if this information is deemed necessary.

However, in the following circumstances:

- where there is a legal requirement to disclose information (e.g. the Children Act 1989, Prevention of Terrorism Act 2005 or The Proceeds of Crime Act 2002)
- when there are clear indications that you present a serious risk of harm to yourself or others
- when we may be required to do so by Trust rules or policies

information will be disclosed without your consent to the HR Manager who will then take appropriate action.

# Workplace Mediation Flowchart

# Conflict – first steps

